

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

Plaintiff,

v.

S. SAVOIE, et al.,

Defendants.

No. 1:21-cv-01552-KES-GSA (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
THIS CASE WITHOUT PREJUDICE FOR  
FAILURE TO OBEY THE COURT'S ORDER  
TO PAY FILING FEE

Doc. 24

Plaintiff Guillermo Trujillo Cruz is proceeding pro se in this civil rights action pursuant to 42 U.S.C. section 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 25, 2021, the assigned magistrate judge issued findings and recommendations identifying plaintiff as a three strikes litigant within the meaning of 28 U.S.C. § 1915(g) and concluding that he did not qualify for the imminent danger exception. *See* Doc. 5. The magistrate judge therefore recommended that plaintiff's motion to proceed in forma pauperis be denied. *See id.* On November 22, 2021, the then-assigned district judge adopted the findings and recommendations in full and ordered that plaintiff pay the filing fee to proceed with his case. Doc. 12.

In lieu of paying the filing fee, plaintiff filed a notice of appeal to the Ninth Circuit. Doc. 13. On February 27, 2023, the Ninth Circuit dismissed the appeal "[b]ecause the appeal is

1 so insubstantial as to not warrant further review.” Doc. 20 (citing *in re Thomas*, 508 F.3d 1225  
2 (9th Cir. 2007)). In light of the Ninth Circuit’s order, on March 3, 2023, the assigned magistrate  
3 judge issued an order requiring that plaintiff pay the filing fee in full by April 14, 2023. Doc. 21.  
4 Plaintiff failed to pay the filing fee as required.

5 Accordingly, on May 8, 2023, the assigned magistrate judge issued findings and  
6 recommendations recommending that this case be dismissed without prejudice for failure to obey  
7 the court’s order to pay the filing fee. Doc. 24. On May 23, 2023, plaintiff filed objections to the  
8 findings and recommendations. Doc. 27. On June 5, 2023, plaintiff filed another motion to  
9 proceed in forma pauperis and more objections to the findings and recommendations. Docs. 28,  
10 29. On December 1, 2023, this matter was temporarily assigned to the No District Court Judge  
11 docket due to the elevation of the then-assigned district judge to the Ninth Circuit. Doc. 30. On  
12 March 13, 2024, the case was reassigned to the undersigned. Doc. 32.

13 Pursuant to 28 U.S.C. § 636(b)(1), this Court conducted a de novo review of this case.  
14 Having carefully reviewed the matter, the Court concludes the findings and recommendations are  
15 supported by the record and proper analysis and this case should be dismissed for plaintiff’s  
16 failure to obey the court’s order to pay the filing fee in full.

17 In his objections, plaintiff does not dispute the magistrate judge’s analysis that plaintiff  
18 has failed to obey a court order and that the *Pagtalunan* factors weigh in favor of dismissal. *See*  
19 Docs. 27, 29 (citing *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002)). Rather, he argues  
20 that the Court’s previous denial of plaintiff’s application to proceed in forma pauperis erred in  
21 finding that plaintiff was not in imminent danger at the time he filed his complaint. *See* Docs. 27,  
22 29. To the extent plaintiff is seeking reconsideration of the prior order denying him IFP status, he  
23 fails to identify any new information or other basis for reconsideration, and the finding that  
24 plaintiff was not in imminent danger at the time of his filing was not clearly erroneous. *See Zeyen*  
25 *v. Bonneville Joint District*, #93, 114 F.4th 1129, 1138 (9th Cir. 2024) (court is bound by  
26 previous decision in case unless it is clearly erroneous and would work a manifest injustice,  
27 intervening controlling authority makes reconsideration appropriate, or substantially different  
28 evidence was adduced at subsequent trial). Moreover, the Ninth Circuit dismissed his appeal of

1 the IFP denial as “insubstantial.” *See* Doc. 20.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The findings and recommendations issued May 8, 2023, Doc. 24, are ADOPTED IN  
4 FULL;
- 5 2. This matter is DISMISSED without prejudice for failure to obey the Court’s order to  
6 pay the filing fee, issued March 3, 2023 (*see* ECF No. 21; *see also* Doc. 12); and  
7 3. The Clerk of the Court is directed to terminate all pending motions and to close this  
8 case.

9  
10  
11 IT IS SO ORDERED.

12 Dated: January 5, 2025

  
UNITED STATES DISTRICT JUDGE